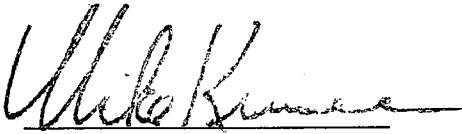


I certify this to be a true and correct  
copy of the indicated document as  
referred or transmitted to committee.

Chief Clerk of the House

FILED MAR 10 2005

By:



H.B. No. 2651

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Texas Natural Resource  
Conservation Commission to regulate a sub-surface area drip  
dispersal system as a separate category of commercial,  
industrial, and municipal non-hazardous liquid waste disposal.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Water Code, Title 2. Water Administration,  
Subtitle D. Water Quality Control, Chapter 27. Injection Wells,  
Subchapter A. General Provisions, Subsection 27.002, is amended  
to read as follows:

§ 27.002. DEFINITIONS.

(11) "Injection well" means an artificial excavation  
or opening in the ground made by digging, boring, drilling,  
jetting, driving, or some other method, and used to inject,  
transmit, or dispose of industrial and municipal waste or oil  
and gas waste into a subsurface stratum; or a well initially  
drilled to produce oil and gas which is used to transmit,  
inject, or dispose of industrial and municipal waste or oil and  
gas waste into a subsurface stratum; or a well used for the  
injection of any other fluid; but the term does not include any  
surface pit, surface excavation, ~~or~~ natural depression or sub-  
surface area drip dispersal system used to dispose of industrial  
and municipal waste or oil and gas waste.

1           SECTION 2.    Water Code, Title 2. Water Administration,  
2   Subtitle D. Water Quality Control is amended by adding Chapter  
3   32 to read as follows:

4           CHAPTER 32. SUB-SURFACE AREA DRIP DISPERSAL SYSTEM

6                   SUBCHAPTER A. GENERAL PROVISIONS

8           § 32.001.   SHORT TITLE.   This chapter may be cited as the  
9   Sub-Surface Area Drip Dispersal System Act.

12          § 32.002.   DEFINITIONS.   In this chapter:

13               (1) "Commission" means the Texas Natural Resource  
14 Conservation Commission.

15               (2) "Executive director" means the executive director  
16 of the Texas Natural Resource Conservation Commission.

17               (3) "Sub-surface area drip dispersal system" means a  
18 waste disposal system that injects processed commercial,  
19 industrial, and municipal waste, but not excluded waste or  
20 hazardous waste, into the ground at a depth of no more than 48  
21 inches with such injection spread over an area such that the  
22 soil hydrologic absorption rate and crop/plant root absorption  
23 rate is not exceeded.

24               (4) "Processed" means the action of reducing liquid  
25 waste to a state that will allow injection by sub-surface drip  
26 dispersal into an area without creating pollution.

27               (5) "Pollution" means the alteration of the physical,

1 chemical, or biological quality of, or the contamination of,  
2 water that makes it harmful, detrimental, or injurious to  
3 humans, animal life, vegetation, or property or to public  
4 health, safety, or welfare, or impairs the usefulness or the  
5 public enjoyment of the water for any lawful or reasonable  
6 purpose.

7 (6) "Hazardous waste" has the meaning assigned to that  
8 term by Section 361.003, Health and Safety Code.

9 (7) "Commercial, industrial and municipal waste means  
10 any water-dominant liquid waste substances, which may cause or  
11 might reasonably be expected to cause pollution of fresh water  
12 and which might result from:

13 (a) processes of industry, manufacturing, trade,  
14 or business;

15 (b) development or recovery of natural resources  
16 other than oil, gas, sulfur, coal tars, or desalinization;

17 (c) disposal of sewage or other wastes of cities,  
18 towns, villages, communities, water districts, other municipal  
19 corporations, educational facilities, apartment complexes, and  
20 other commercial facilities;

21 (8) "Excluded waste" means waste arising out of or  
22 incidental to drilling for or producing of oil, gas, geothermal  
23 resources, sulfur, tar sands, or brine from desalinization,  
24 waste arising out of or incidental to the underground storage of  
25 hydrocarbons other than storage in artificial tanks or  
26 containers, or waste arising out of or incidental to the  
27 operation of gasoline plants, natural gas processing plants, or

1 pressure maintenance or re-pressurizing plants. The term  
2 includes but is not limited to salt water, brine, sludge,  
3 drilling mud, and other liquid or semi-liquid waste material.

4 (9) "Fresh water" means water having bacteriological,  
5 physical, and chemical properties which make it suitable and  
6 feasible for beneficial use for any lawful purpose.

7 §32.003. POLICY AND PURPOSE. It is the policy of this  
8 state and the purpose of this chapter to maintain the quality of  
9 fresh water in the state to the extent consistent with the  
10 public health and welfare and the operation of existing  
11 industries, to promote the beneficial reuse of commercial,  
12 industrial, and municipal waste for economic development of the  
13 state thereby reducing the demand on the state's supply of fresh  
14 water, to prevent underground injection that may pollute fresh  
15 water, and to require the use of all reasonable methods to  
16 implement this policy.

#### 17 18 SUBCHAPTER B. JURISDICTION OF COMMISSION

19  
20 §32.011. PERMIT FROM COMMISSION. No person may operate a  
21 sub-surface area drip dispersal system without first obtaining a  
22 permit from the commission.

23 §32.012. APPLICATION FOR PERMIT. The commission shall  
24 prescribe forms for application for a permit and shall make the  
25 forms available on request without charge.

26 §32.013. INFORMATION REQUIRED OF APPLICANT. An applicant  
27 shall furnish any information the executive director considers

1 necessary to discharge his duties under this chapter and the  
2 rules of the commission.

3 §32.014. APPLICATION FEE. With each application for a  
4 sub-surface area drip disposal system permit, the commission  
5 shall collect a fee in the amount provided by and under the  
6 terms of Section 5.235.

7 §32.015. INSPECTION OF DISPERSION AREA. On receiving an  
8 application for a permit, the executive director shall have an  
9 inspection made of the location of the proposed dispersion area  
10 to determine the local conditions and the probable effect of the  
11 drip dispersion system.

12 §32.016. RECOMMENDATIONS FROM OTHER ENTITIES. The  
13 executive director shall submit to the Texas Department of  
14 Health and to other persons which the commission may designate  
15 copies of every application received in proper form. These  
16 entities may make recommendations to the commission concerning  
17 any aspect of the application within 30 days.

18 §32.017. HEARING ON PERMIT APPLICATION.

19 (a) If it is considered necessary and in the public  
20 interest, the commission may hold a public hearing on the permit  
21 application. The commission shall hold a hearing on a permit  
22 application for a sub-surface area drip dispersion system to  
23 dispose of processed commercial, industrial, and municipal waste  
24 if a hearing is requested by a local government located in the  
25 county of the proposed disposal well site or by an affected  
26 person. In this subsection, "local government" has the meaning  
27 provided for that term by Chapter 26 of this code.

1           (b) The commission by rule shall provide for giving  
2 notice of the opportunity to request a public hearing on a  
3 permit application. The rules for notice shall include  
4 provisions for giving notice to local governments and affected  
5 persons. The commission shall define "affected person" by rule.

6           (c) Before the commission begins to hear testimony in  
7 a contested case as defined by Chapter 2001, Government Code,  
8 evidence must be placed in the record to demonstrate that proper  
9 notice regarding the hearing was given to affected persons. If  
10 mailed notice to an affected person is required, the commission  
11 or other party to the hearing shall place evidence in the record  
12 that notice was mailed to the address of the affected person  
13 included in the appropriate county tax rolls at the time of  
14 mailing. For the purposes of this subsection, the affidavit of  
15 the commission employee responsible for the mailing of the  
16 notice, attesting to the fact that notice was mailed to the  
17 address included in the tax rolls at the time of mailing, shall  
18 be prima facie evidence of proper mailing. The commission may  
19 not proceed with receipt of testimony in a contested case until  
20 there is compliance with this subsection.

21       § 32.018. RULES, ETC.

22           (a) The commission shall adopt rules and procedures  
23 reasonably required for the performance of its powers, duties,  
24 and functions under this chapter by July 31, 2006.

25           (b) Copies of any rules under this chapter proposed by  
26 the commission shall, before their adoption, be sent to the  
27 Texas Department of Health and any other persons the commission

1 may designate. Any agency or person to whom the copies of  
2 proposed rules are sent may submit comments and recommendations  
3 to the commission and shall have reasonable time to do so as the  
4 commission may prescribe.

5  
6 SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

7  
8 § 32.051. ISSUANCE OF PERMIT.

9 (a) The commission may grant an application in whole  
10 or part and may issue the permit if it finds:

11 (1) That the use or installation of the sub-  
12 surface area drip dispersal system is in the public interest;

13 (2) That, with proper safeguards, both ground and  
14 surface fresh water can be adequately protected from pollution;

15 (3) That the applicant has provided for the  
16 proper operation of the proposed sub-surface area drip dispersal  
17 system;

18 (b) In the permit, the commission shall impose terms  
19 and conditions reasonably necessary to protect fresh water from  
20 pollution.

21 (c) The commission, in determining if the use or  
22 installation of a sub-surface area drip dispersal system is in  
23 the public interest under Subsection (a)(1), shall consider, but  
24 shall not be limited to the consideration of:

25 (1) compliance history of the applicant and  
26 related entities under the method for evaluating compliance  
27 history developed by the commission under Section 5.754 and in

1 accordance with the provisions of Subsection (d);

2                   (2) whether there is a practical, economic, and  
3 feasible alternative to a sub-surface area drip dispersal system  
4 reasonably available; and

5                   (d) The commission shall establish a procedure for the  
6 preparation of comprehensive summaries of the applicant's  
7 compliance history, including the compliance history of any  
8 corporation or business entity managed, owned, or otherwise  
9 closely related to the applicant. The summaries shall be made  
10 available to the applicant and any interested person after the  
11 commission has completed its technical review of the permit  
12 application and prior to the promulgation of the public notice  
13 relating to the issuance of the permit. Evidence of compliance  
14 or noncompliance by an applicant for a sub-surface area drip  
15 dispersal system permit with environmental statutes and the  
16 rules adopted or orders or permits issued by the commission may  
17 be offered by any party at a hearing on the applicant's  
18 application and admitted into evidence subject to applicable  
19 rules of evidence. Evidence of the compliance history of an  
20 applicant for a sub-surface area drip dispersal system permit  
21 may be offered by the executive director at a hearing on the  
22 application and admitted into evidence subject to the rules of  
23 evidence. All evidence admitted, including compliance history,  
24 shall be considered by the commission in determining whether to  
25 issue, amend, extend or renew a permit. If the commission  
26 concludes that the applicant's compliance history is  
27 unacceptable, the commission shall deny the permit.



1        § 32.052. COPIES OF PERMIT FILING REQUIREMENTS.

2        (a)    The commission shall furnish the Texas Department of  
3 Health with a copy of each permit the commission issues.

4        (b)    Before beginning injection operations, a person  
5 receiving a permit for a sub-surface area drip dispersal system  
6 to inject commercial, industrial, and municipal waste shall file  
7 a copy of the permit with the health authorities of the county,  
8 city, and town where the system is located.

9  
10                    SUBCHAPTER D. GENERAL POWERS

11  
12        § 32.071. POWER TO ENTER PROPERTY. Members of the  
13 commission and employees of the commission may enter public or  
14 private property to inspect and investigate conditions relating  
15 to the sub-surface area drip dispersal system for activities  
16 within the commission's jurisdictions or to monitor compliance  
17 with a rule, permit, or other order of the commission. Members  
18 or employees acting under the authority of this section who  
19 enter an establishment on public or private property shall  
20 observe the establishment's safety, internal security, and fire  
21 protection rules.

22  
23        § 32.072. POWER TO EXAMINE RECORDS. Members of the  
24 commission and employees of the commission may examine and copy  
25 those records or memoranda of a business they are investigating  
26 as provided by Section 32.071 of this code that relate to the  
27 operation of a sub-surface area drip dispersal system, or any

1 other records required to be maintained by law.

2       SECTION 3.     This Act takes effect immediately if it  
3 receives a vote of two-thirds of all the members elected to each  
4 house, as provided by Section 39, Article III, Texas  
5 Constitution. If this Act does not receive the vote necessary  
6 for immediate effect, this Act takes effect September 1, 2005.

# HOUSE COMMITTEE REPORT

1<sup>st</sup> Printing

05 MAY -4 AM 12: 32  
HOUSE OF REPRESENTATIVES

By: Krusee

H.B. No. 2651

Substitute the following for H.B. No. 2651:

By: Smith of Harris

C.S.H.B. No. 2651

## A BILL TO BE ENTITLED

### AN ACT

relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Water Code, is amended by adding Chapter 32 to read as follows:

#### CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste substance that may cause or might reasonably be expected to cause pollution of fresh water and that may result from:

(i) processes of industry, manufacturing, trade, or business;

(ii) development or recovery of natural resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, other municipal corporations, educational facilities, apartment

complexes, and other commercial facilities; and

(B) does not include:

(i) oil and gas waste, as defined by Section 27.002;

(ii) tar sands;

(iii) sulfur;

(iv) brine from desalination; or

(v) hazardous waste, as defined by Section 361.003, Health and Safety Code.

(3) "Department" means the Department of State Health Services.

(4) "Executive director" means the executive director of the commission.

(5) "Fresh water" has the meaning assigned by Section 27.002.

(6) "Pollution" has the meaning assigned by Section 27.002.

(7) "Processed" means the action of reducing liquid waste to a state that will allow injection by subsurface drip dispersal into an area without creating pollution.

(8) "Subsurface area drip dispersal system" means a waste disposal system that injects processed commercial, industrial, or municipal waste into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

Sec. 32.003. POLICY AND PURPOSE. It is the policy of this

state and the purpose of this chapter to:

(1) maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries;

(2) promote the beneficial reuse of commercial, industrial, and municipal waste for the economic development of the state, thereby reducing the demand on the state's supply of fresh water;

(3) prevent underground injection that may pollute fresh water; and

(4) require the use of all reasonable methods to implement this policy.

[Sections 32.004-32.050 reserved for expansion]

SUBCHAPTER B. JURISDICTION OF COMMISSION

Sec. 32.051. PERMIT FROM COMMISSION. A person may not operate a subsurface area drip dispersal system without first obtaining a permit from the commission.

Sec. 32.052. APPLICATION FOR PERMIT. The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge the executive director's duties under this chapter and the rules of the commission.

Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving an application for a permit, the executive director shall inspect the location of the proposed dispersion area to determine the local

1 conditions and the probable effect of the subsurface area drip  
2 dispersal system.

3 Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The  
4 executive director shall submit to the department and to other  
5 persons designated by the commission copies of each permit  
6 application received in proper form. A person to whom an  
7 application is submitted may make recommendations to the commission  
8 concerning any aspect of the application not later than the 30th day  
9 after the date the application is submitted.

10 Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this  
11 section, "local government" has the meaning assigned by Section  
12 26.001.

13 (b) The commission may hold a public hearing on a permit  
14 application for a subsurface area drip dispersal system if the  
15 commission determines that a hearing is necessary and in the public  
16 interest.

17 (c) The commission shall hold a public hearing on a permit  
18 application for a subsurface area drip dispersal system if a  
19 hearing is requested by a local government located in the county of  
20 the proposed disposal site or by an affected person.

21 (d) The commission by rule shall provide for giving notice  
22 of the opportunity to request a public hearing on a permit  
23 application. The rules for notice shall include provisions for  
24 giving notice to local governments and affected persons.

25 (e) Before the commission begins to hear the testimony in a  
26 contested case as defined by Chapter 2001, Government Code,  
27 evidence must be placed in the record to demonstrate that proper

1 notice regarding the hearing was given to affected persons. If  
2 mailed notice to an affected person is required, the commission or  
3 other party to the hearing shall place evidence in the record that  
4 notice was mailed to the address of the affected person included in  
5 the appropriate county tax rolls at the time of mailing. For the  
6 purposes of this subsection, the affidavit of the commission  
7 employee responsible for the mailing of the notice, attesting to  
8 the fact that notice was mailed to the address included in the tax  
9 rolls at the time of mailing, shall be prima facie evidence of  
10 proper mailing. The commission may not proceed with receipt of  
11 testimony in a contested case until the requirements of this  
12 subsection are complied with.

13 Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The  
14 commission shall send copies of proposed rules under this chapter  
15 to the department and any other persons designated by the  
16 commission. A person to whom the copies of proposed rules are sent  
17 may submit comments and recommendations to the commission and shall  
18 have a reasonable time to do so as determined by the commission.

19 [Sections 32.058-32.100 reserved for expansion]

20 SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

21 Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may  
22 grant an application for a permit for a subsurface area drip  
23 dispersal system in whole or part and may issue the permit if it  
24 finds that:

25 (1) the use or installation of the system is in the  
26 public interest;

27 (2) with proper safeguards, both subsurface and

1 surface fresh water can be adequately protected from pollution; and

2 (3) the applicant has provided for the proper  
3 operation of the system.

4 (b) In the permit, the commission shall impose terms and  
5 conditions reasonably necessary to protect fresh water from  
6 pollution.

7 (c) The commission, in determining if the use or  
8 installation of a subsurface area drip dispersal system is in the  
9 public interest under Subsection (a)(1), shall consider:

10 (1) compliance history of the applicant and related  
11 entities under the method for evaluating compliance history  
12 developed by the commission under Section 5.754 and in accordance  
13 with the provisions of Subsection (d) of this section;

14 (2) whether there is a practical, economic, and  
15 feasible alternative to a subsurface area drip dispersal system  
16 reasonably available; and

17 (3) any other factor the commission considers  
18 relevant.

19 (d) The commission shall establish a procedure for the  
20 preparation of comprehensive summaries of the applicant's  
21 compliance history, including the compliance history of any  
22 corporation or other business entity managed, owned, or otherwise  
23 closely related to the applicant. The summaries shall be made  
24 available to the applicant and any interested person after the  
25 commission has completed its technical review of the permit  
26 application and prior to giving public notice relating to the  
27 issuance of the permit. Evidence of compliance or noncompliance by



1 an applicant for a subsurface area drip dispersal system permit  
2 with environmental statutes and the rules adopted or orders or  
3 permits issued by the commission may be offered by any party at a  
4 hearing on the applicant's application and admitted into evidence  
5 subject to applicable rules of evidence. Evidence of the  
6 compliance history of an applicant for a subsurface area drip  
7 dispersal system permit may be offered by the executive director at  
8 a hearing on the application and admitted into evidence subject to  
9 the rules of evidence. The commission shall consider all evidence  
10 admitted, including compliance history, in determining whether to  
11 issue, amend, extend, or renew a permit. If the commission  
12 concludes that the applicant's compliance history is unacceptable,  
13 the commission shall deny the permit.

14 Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The  
15 commission shall send to the department a copy of each permit issued  
16 under this chapter.

17 (b) Before beginning injection operations, a person  
18 receiving a permit for a subsurface area drip dispersal system  
19 shall file a copy of the permit with the applicable local health  
20 authorities of the area in which the system is located.

21 [Sections 32.103-32.150 reserved for expansion]

22 SUBCHAPTER D. GENERAL POWERS

23 Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee  
24 of the commission or an authorized agent or employee of a local  
25 government may enter public or private property to inspect and  
26 investigate conditions relating to a subsurface area drip dispersal  
27 system in connection with subsurface drip dispersal activities or

1 to monitor compliance with a rule, permit, or order of the  
2 commission. A member or employee acting under the authority of this  
3 section who enters an establishment on public or private property  
4 shall observe the establishment's safety, internal security, and  
5 fire protection rules.

6 Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee  
7 of the commission or an authorized agent or employee of a local  
8 government may examine and copy any record or memorandum of a  
9 business the member, employee, or agent is investigating as  
10 provided by Section 32.151 that relates to the operation of a  
11 subsurface area drip dispersal system or any other record the  
12 commission requires the business to maintain.

13 SECTION 2. (a) The Texas Commission on Environmental  
14 Quality shall adopt rules and be prepared to accept applications  
15 for permits under Chapter 32, Water Code, as added by this Act, not  
16 later than July 31, 2006.

17 (b) A person is not required to hold a permit under Chapter  
18 32, Water Code, as added by this Act, before November 1, 2006.

19 SECTION 3. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick  
Speaker of the House of Representatives

4-29-05  
(date)

Sir:

We, your COMMITTEE ON ENVIRONMENTAL REGULATION

to whom was referred HB 2651 have had the same under consideration and beg to report back with the recommendation that it

- ( ) do pass, without amendment.
- ( ) do pass, with amendment(s).
- (X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- (X) yes ( ) no A fiscal note was requested.
- ( ) yes (X) no A criminal justice policy impact statement was requested.
- ( ) yes (X) no An equalized educational funding impact statement was requested.
- ( ) yes (X) no An actuarial analysis was requested.
- ( ) yes (X) no A water development policy impact statement was requested.
- ( ) yes (X) no A tax equity note was requested.
- (X) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor \_\_\_\_\_

Joint Sponsors: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Co-Sponsors: \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Bonnen, Chair				/
Howard, Vice-chair	/			
Driver				/
Homer	/			
King, T.	/			
Kuempel	/			
Smith, W.	/			

Total      5      aye  
                 0      nay  
                 0      present, not voting  
                 2      absent

Dennis Bower  
CHAIR

## **BILL ANALYSIS**

C.S.H.B. 2651

By: Krusee

Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 2001, the Texas Commission on Environmental Quality determined that sub-surface drip dispersal systems would not be included in the Underground Injection Code (UIC) program due to the irrigation and beneficial reuse labels. In August 2003, the Environmental Protection Agency defined any injection within a "formation" as an injection well. The TCEQ determined that the root zone was not included as part of the formation.

However, the EPA has since stated that the root zone is, in fact, part of the formation. Therefore, these systems are required to meet the Federal Underground Injection Code rules for class V injection.

Sub-surface drip dispersal systems reuse water for golf courses, park areas, neighborhood landscaping, school sports and playground facilities, and youth-league sports facilities. These commercial uses can help minimize total waste treatment costs by reducing the need for miles of interceptors or by producing income from the sale of reused water.

C.S.H.B. 2651 keeps sub-surface drip dispersal systems from being placed under Underground Injection Code requirements. C.S.H.B. 2651 requires the TCEQ to create rules separate from the underground injection category and sets up a permitting system for sub-surface drip dispersal systems.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.H.B. 2651 amends the Water Code to set forth the Subsurface Area Drip Dispersal System Act. The bill sets forth the policy and purpose of the Act. The bill prohibits a person from operating a subsurface area drip dispersal system without first obtaining a permit from the Texas Commission on Environmental Quality (TCEQ). The bill sets forth provisions relating to the application for a permit. The bill requires the executive director of the TCEQ to inspect the location of the proposed dispersion area. The bill sets forth provisions relating to soliciting recommendations on permits from other persons. The bill provides for a public hearing on a permit. The bill provides for an opportunity to comment on proposed rules.

The bill sets forth provisions relating to the issuance of a permit, including terms and conditions. The bill authorizes the TCEQ to issue a permit for a subsurface area drip dispersal system if it finds that the installation of the system is in the public interest, fresh water can be protected from pollution, and the applicant has provided for the proper operation of the system. The bill requires the TCEQ to consider compliance history of the applicant, whether there is a feasible and economic alternative to a subsurface area drip dispersal system, and any other relevant factors. The bill sets forth provisions relating to the applicant's compliance history.

The bill requires the TCEQ to send a copy of each permit issued to the Department of State Health Services and the local health authority. The bill authorizes a member or employee of the TCEQ or the authorized agent or employee of a local government to enter public or private property to investigate conditions relating to a subsurface area drip dispersal system. The bill authorizes a member or employee of the TCEQ or the authorized agent or employee of a local

C.S.H.B. 2651 79(R)

government to examine and copy any record of a business that is being investigated in relation to the operation of a subsurface area drip dispersal system.

**EFFECTIVE DATE**

If this Act does not receive the necessary for immediate effect, this Act takes effect September 1, 2005.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute makes the original conform to Legislative Council drafting style.

The substitute removes provisions that added subsurface area drip dispersal systems to the definition of "injection well" in the Water Code.

## SUMMARY OF COMMITTEE ACTION

HB 2651

April 19, 2005      8:00AM

Considered in public hearing

Committee substitute considered in committee

Testimony taken in committee (See attached witness list.)

Left pending in committee

April 29, 2005      upon first adjournment

Considered in formal meeting

Committee substitute considered in committee

Recommended to be sent to Local & Consent

Reported favorably as substituted

WITNESS LIST

HB 2651  
HOUSE COMMITTEE REPORT  
Environmental Regulation Committee

April 19, 2005 - 8:00AM

For: Goldberg, Rick (Self)  
Gordon, John (Self)  
Gullett, Gregory (Self and Waste Water Technologies)  
Prochaska, James (Self)  
On: Wheatley, Wade (Tx Comm. on Environmental Quality)

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 3, 2005**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** HB2651 by Krusee (Relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality. ), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program for sub-surface area drip dispersal systems.

The TCEQ reports that it would require 3 additional FTEs and related costs of approximately \$163,000 per year to handle the additional permitting and enforcement responsibilities created by the bill. Although the would not be authorized to assess a fee to cover the cost of implementing the sub surface area drip dispersal systems permitting program, this estimate does not assume that the additional costs to the TCEQ would be significant to the Waste Permitting and Field Operations divisions' budgets.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 582 Commission on Environmental Quality, 537 Department of State Health Services

**LBB Staff:** JOB, WK, ZS, TL



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 18, 2005**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** HB2651 by Krusee (Relating to the authority of the Texas Natural Resource Conservation Commission to regulate a sub-surface area drip dispersal system as a separate category of commercial, industrial, and municipal non-hazardous liquid waste disposal.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program for sub-surface area drip dispersal systems. The TCEQ would be authorized to charge an application fee

The TCEQ reports that it would require 3 additional FTEs and related costs of approximately \$163,000 per year to handle the additional permitting and enforcement responsibilities created by the bill. The TCEQ reports that since the agency would be authorized to charge a maximum fee of \$2,000 for the application fee plus the costs of notices (approximately \$50), the bill would generate only \$102,000 in revenues in the first year of the program (fiscal year 2006) and only \$16,400 in future years. Although the revenue is therefore not anticipated to cover the cost of implementing the sub surface area drip dispersal systems permitting program, this estimate does not assume that additional costs to the TCEQ would be significant to the Waste Permitting Division and the Field Operations Divisions.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 537 Department of State Health Services, 582 Commission on Environmental Quality  
**LBB Staff:** JOB, WK, ZS, TL

ADOPTED

MAY 5

Re Chief Clerk  
House of Representatives

By:

Ulibarri

H.B. No. 2651

Substitute the following for H.B. No. 2651:

By:

Smith, Wayne

C.S. H.B. No. 2651

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Water Code, is amended by adding Chapter 32 to read as follows:

CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste substance that may cause or might reasonably be expected to cause pollution of fresh water and that may result from:

(i) processes of industry, manufacturing, trade, or business;

(ii) development or recovery of natural resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, other municipal corporations, educational facilities, apartment

1 complexes, and other commercial facilities; and

2 (B) does not include:

3 (i) oil and gas waste, as defined by Section  
4 27.002;

5 (ii) tar sands;

6 (iii) sulfur;

7 (iv) brine from desalination; or

8 (v) hazardous waste, as defined by Section  
9 361.003, Health and Safety Code.

10 (3) "Department" means the Department of State Health  
11 Services.

12 (4) "Executive director" means the executive director  
13 of the commission.

14 (5) "Fresh water" has the meaning assigned by Section  
15 27.002.

16 (6) "Pollution" has the meaning assigned by Section  
17 27.002.

18 (7) "Processed" means the action of reducing liquid  
19 waste to a state that will allow injection by subsurface drip  
20 dispersal into an area without creating pollution.

21 (8) "Subsurface area drip dispersal system" means a  
22 waste disposal system that injects processed commercial,  
23 industrial, or municipal waste into the ground at a depth of not  
24 more than 48 inches and spreads the waste over a large enough area  
25 that the soil hydrologic absorption rate and crop/plant root  
26 absorption rate are not exceeded.

27 Sec. 32.003. POLICY AND PURPOSE. It is the policy of this

1 state and the purpose of this chapter to:

2 (1) maintain the quality of fresh water in the state to  
3 the extent consistent with the public health and welfare and the  
4 operation of existing industries;

5 (2) promote the beneficial reuse of commercial,  
6 industrial, and municipal waste for the economic development of the  
7 state, thereby reducing the demand on the state's supply of fresh  
8 water;

9 (3) prevent underground injection that may pollute  
10 fresh water; and

11 (4) require the use of all reasonable methods to  
12 implement this policy.

13 [Sections 32.004-32.050 reserved for expansion]

14 SUBCHAPTER B. JURISDICTION OF COMMISSION

15 Sec. 32.051. PERMIT FROM COMMISSION. A person may not  
16 operate a subsurface area drip dispersal system without first  
17 obtaining a permit from the commission.

18 Sec. 32.052. APPLICATION FOR PERMIT. The commission shall  
19 prescribe forms for application for a permit and shall make the  
20 forms available on request without charge.

21 Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An  
22 applicant shall furnish any information the executive director  
23 considers necessary to discharge the executive director's duties  
24 under this chapter and the rules of the commission.

25 Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving  
26 an application for a permit, the executive director shall inspect  
27 the location of the proposed dispersion area to determine the local

1 conditions and the probable effect of the subsurface area drip  
2 dispersal system.

3 Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The  
4 executive director shall submit to the department and to other  
5 persons designated by the commission copies of each permit  
6 application received in proper form. A person to whom an  
7 application is submitted may make recommendations to the commission  
8 concerning any aspect of the application not later than the 30th day  
9 after the date the application is submitted.

10 Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this  
11 section, "local government" has the meaning assigned by Section  
12 26.001.

13 (b) The commission may hold a public hearing on a permit  
14 application for a subsurface area drip dispersal system if the  
15 commission determines that a hearing is necessary and in the public  
16 interest.

17 (c) The commission shall hold a public hearing on a permit  
18 application for a subsurface area drip dispersal system if a  
19 hearing is requested by a local government located in the county of  
20 the proposed disposal site or by an affected person.

21 (d) The commission by rule shall provide for giving notice  
22 of the opportunity to request a public hearing on a permit  
23 application. The rules for notice shall include provisions for  
24 giving notice to local governments and affected persons.

25 (e) Before the commission begins to hear the testimony in a  
26 contested case as defined by Chapter 2001, Government Code,  
27 evidence must be placed in the record to demonstrate that proper

1 notice regarding the hearing was given to affected persons. If  
2 mailed notice to an affected person is required, the commission or  
3 other party to the hearing shall place evidence in the record that  
4 notice was mailed to the address of the affected person included in  
5 the appropriate county tax rolls at the time of mailing. For the  
6 purposes of this subsection, the affidavit of the commission  
7 employee responsible for the mailing of the notice, attesting to  
8 the fact that notice was mailed to the address included in the tax  
9 rolls at the time of mailing, shall be prima facie evidence of  
10 proper mailing. The commission may not proceed with receipt of  
11 testimony in a contested case until the requirements of this  
12 subsection are complied with.

13 Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The  
14 commission shall send copies of proposed rules under this chapter  
15 to the department and any other persons designated by the  
16 commission. A person to whom the copies of proposed rules are sent  
17 may submit comments and recommendations to the commission and shall  
18 have a reasonable time to do so as determined by the commission.

19 [Sections 32.058-32.100 reserved for expansion]

20 SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

21 Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may  
22 grant an application for a permit for a subsurface area drip  
23 dispersal system in whole or part and may issue the permit if it  
24 finds that:

25 (1) the use or installation of the system is in the  
26 public interest;

27 (2) with proper safeguards, both subsurface and

1 surface fresh water can be adequately protected from pollution; and

2 (3) the applicant has provided for the proper  
3 operation of the system.

4 (b) In the permit, the commission shall impose terms and  
5 conditions reasonably necessary to protect fresh water from  
6 pollution.

7 (c) The commission, in determining if the use or  
8 installation of a subsurface area drip dispersal system is in the  
9 public interest under Subsection (a)(1), shall consider:

10 (1) compliance history of the applicant and related  
11 entities under the method for evaluating compliance history  
12 developed by the commission under Section 5.754 and in accordance  
13 with the provisions of Subsection (d) of this section;

14 (2) whether there is a practical, economic, and  
15 feasible alternative to a subsurface area drip dispersal system  
16 reasonably available; and

17 (3) any other factor the commission considers  
18 relevant.

19 (d) The commission shall establish a procedure for the  
20 preparation of comprehensive summaries of the applicant's  
21 compliance history, including the compliance history of any  
22 corporation or other business entity managed, owned, or otherwise  
23 closely related to the applicant. The summaries shall be made  
24 available to the applicant and any interested person after the  
25 commission has completed its technical review of the permit  
26 application and prior to giving public notice relating to the  
27 issuance of the permit. Evidence of compliance or noncompliance by

1 an applicant for a subsurface area drip dispersal system permit  
2 with environmental statutes and the rules adopted or orders or  
3 permits issued by the commission may be offered by any party at a  
4 hearing on the applicant's application and admitted into evidence  
5 subject to applicable rules of evidence. Evidence of the  
6 compliance history of an applicant for a subsurface area drip  
7 dispersal system permit may be offered by the executive director at  
8 a hearing on the application and admitted into evidence subject to  
9 the rules of evidence. The commission shall consider all evidence  
10 admitted, including compliance history, in determining whether to  
11 issue, amend, extend, or renew a permit. If the commission  
12 concludes that the applicant's compliance history is unacceptable,  
13 the commission shall deny the permit.

14 Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The  
15 commission shall send to the department a copy of each permit issued  
16 under this chapter.

17 (b) Before beginning injection operations, a person  
18 receiving a permit for a subsurface area drip dispersal system  
19 shall file a copy of the permit with the applicable local health  
20 authorities of the area in which the system is located.

21 [Sections 32.103-32.150 reserved for expansion]

#### 22 SUBCHAPTER D. GENERAL POWERS

23 Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee  
24 of the commission or an authorized agent or employee of a local  
25 government may enter public or private property to inspect and  
26 investigate conditions relating to a subsurface area drip dispersal  
27 system in connection with subsurface drip dispersal activities or



1 to monitor compliance with a rule, permit, or order of the  
2 commission. A member or employee acting under the authority of this  
3 section who enters an establishment on public or private property  
4 shall observe the establishment's safety, internal security, and  
5 fire protection rules.

6 Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee  
7 of the commission or an authorized agent or employee of a local  
8 government may examine and copy any record or memorandum of a  
9 business the member, employee, or agent is investigating as  
10 provided by Section 32.151 that relates to the operation of a  
11 subsurface area drip dispersal system or any other record the  
12 commission requires the business to maintain.

13 SECTION 2. (a) The Texas Commission on Environmental  
14 Quality shall adopt rules and be prepared to accept applications  
15 for permits under Chapter 32, Water Code, as added by this Act, not  
16 later than July 31, 2006.

17 (b) A person is not required to hold a permit under Chapter  
18 32, Water Code, as added by this Act, before November 1, 2006.

19 SECTION 3. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2005.

# HOUSE ENGROSSMENT

By: Krusee

H.B. No. 2651

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Water Code, is amended by adding Chapter 32 to read as follows:

CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste substance that may cause or might reasonably be expected to cause pollution of fresh water and that may result from:

(i) processes of industry, manufacturing, trade, or business;

(ii) development or recovery of natural resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, other municipal corporations, educational facilities, apartment

complexes, and other commercial facilities; and

(B) does not include:

(i) oil and gas waste, as defined by Section  
27.002;

(ii) tar sands;

(iii) sulfur;

(iv) brine from desalination; or

(v) hazardous waste, as defined by Section  
361.003, Health and Safety Code.

(3) "Department" means the Department of State Health  
Services.

(4) "Executive director" means the executive director  
of the commission.

(5) "Fresh water" has the meaning assigned by Section  
27.002.

(6) "Pollution" has the meaning assigned by Section  
27.002.

(7) "Processed" means the action of reducing liquid  
waste to a state that will allow injection by subsurface drip  
dispersal into an area without creating pollution.

(8) "Subsurface area drip dispersal system" means a  
waste disposal system that injects processed commercial,  
industrial, or municipal waste into the ground at a depth of not  
more than 48 inches and spreads the waste over a large enough area  
that the soil hydrologic absorption rate and crop/plant root  
absorption rate are not exceeded.

Sec. 32.003. POLICY AND PURPOSE. It is the policy of this

state and the purpose of this chapter to:

(1) maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries;

(2) promote the beneficial reuse of commercial, industrial, and municipal waste for the economic development of the state, thereby reducing the demand on the state's supply of fresh water;

(3) prevent underground injection that may pollute fresh water; and

(4) require the use of all reasonable methods to implement this policy.

[Sections 32.004-32.050 reserved for expansion]

SUBCHAPTER B. JURISDICTION OF COMMISSION

Sec. 32.051. PERMIT FROM COMMISSION. A person may not operate a subsurface area drip dispersal system without first obtaining a permit from the commission.

Sec. 32.052. APPLICATION FOR PERMIT. The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge the executive director's duties under this chapter and the rules of the commission.

Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving an application for a permit, the executive director shall inspect the location of the proposed dispersion area to determine the local

1 conditions and the probable effect of the subsurface area drip  
2 dispersal system.

3 Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The  
4 executive director shall submit to the department and to other  
5 persons designated by the commission copies of each permit  
6 application received in proper form. A person to whom an  
7 application is submitted may make recommendations to the commission  
8 concerning any aspect of the application not later than the 30th day  
9 after the date the application is submitted.

10 Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this  
11 section, "local government" has the meaning assigned by Section  
12 26.001.

13 (b) The commission may hold a public hearing on a permit  
14 application for a subsurface area drip dispersal system if the  
15 commission determines that a hearing is necessary and in the public  
16 interest.

17 (c) The commission shall hold a public hearing on a permit  
18 application for a subsurface area drip dispersal system if a  
19 hearing is requested by a local government located in the county of  
20 the proposed disposal site or by an affected person.

21 (d) The commission by rule shall provide for giving notice  
22 of the opportunity to request a public hearing on a permit  
23 application. The rules for notice shall include provisions for  
24 giving notice to local governments and affected persons.

25 (e) Before the commission begins to hear the testimony in a  
26 contested case as defined by Chapter 2001, Government Code,  
27 evidence must be placed in the record to demonstrate that proper

notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. For the purposes of this subsection, the affidavit of the commission employee responsible for the mailing of the notice, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, shall be prima facie evidence of proper mailing. The commission may not proceed with receipt of testimony in a contested case until the requirements of this subsection are complied with.

Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The commission shall send copies of proposed rules under this chapter to the department and any other persons designated by the commission. A person to whom the copies of proposed rules are sent may submit comments and recommendations to the commission and shall have a reasonable time to do so as determined by the commission.

[Sections 32.058-32.100 reserved for expansion]

#### SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may grant an application for a permit for a subsurface area drip dispersal system in whole or part and may issue the permit if it finds that:

(1) the use or installation of the system is in the public interest;

(2) with proper safeguards, both subsurface and

1 surface fresh water can be adequately protected from pollution; and

2 (3) the applicant has provided for the proper  
3 operation of the system.

4 (b) In the permit, the commission shall impose terms and  
5 conditions reasonably necessary to protect fresh water from  
6 pollution.

7 (c) The commission, in determining if the use or  
8 installation of a subsurface area drip dispersal system is in the  
9 public interest under Subsection (a)(1), shall consider:

10 (1) compliance history of the applicant and related  
11 entities under the method for evaluating compliance history  
12 developed by the commission under Section 5.754 and in accordance  
13 with the provisions of Subsection (d) of this section;

14 (2) whether there is a practical, economic, and  
15 feasible alternative to a subsurface area drip dispersal system  
16 reasonably available; and

17 (3) any other factor the commission considers  
18 relevant.

19 (d) The commission shall establish a procedure for the  
20 preparation of comprehensive summaries of the applicant's  
21 compliance history, including the compliance history of any  
22 corporation or other business entity managed, owned, or otherwise  
23 closely related to the applicant. The summaries shall be made  
24 available to the applicant and any interested person after the  
25 commission has completed its technical review of the permit  
26 application and prior to giving public notice relating to the  
27 issuance of the permit. Evidence of compliance or noncompliance by

1 an applicant for a subsurface area drip dispersal system permit  
 2 with environmental statutes and the rules adopted or orders or  
 3 permits issued by the commission may be offered by any party at a  
 4 hearing on the applicant's application and admitted into evidence  
 5 subject to applicable rules of evidence. Evidence of the  
 6 compliance history of an applicant for a subsurface area drip  
 7 dispersal system permit may be offered by the executive director at  
 8 a hearing on the application and admitted into evidence subject to  
 9 the rules of evidence. The commission shall consider all evidence  
 10 admitted, including compliance history, in determining whether to  
 11 issue, amend, extend, or renew a permit. If the commission  
 12 concludes that the applicant's compliance history is unacceptable,  
 13 the commission shall deny the permit.

14 Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The  
 15 commission shall send to the department a copy of each permit issued  
 16 under this chapter.

17 (b) Before beginning injection operations, a person  
 18 receiving a permit for a subsurface area drip dispersal system  
 19 shall file a copy of the permit with the applicable local health  
 20 authorities of the area in which the system is located.

21 [Sections 32.103-32.150 reserved for expansion]

#### 22 SUBCHAPTER D. GENERAL POWERS

23 Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee  
 24 of the commission or an authorized agent or employee of a local  
 25 government may enter public or private property to inspect and  
 26 investigate conditions relating to a subsurface area drip dispersal  
 27 system in connection with subsurface drip dispersal activities or



1 to monitor compliance with a rule, permit, or order of the  
2 commission. A member or employee acting under the authority of this  
3 section who enters an establishment on public or private property  
4 shall observe the establishment's safety, internal security, and  
5 fire protection rules.

6 Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee  
7 of the commission or an authorized agent or employee of a local  
8 government may examine and copy any record or memorandum of a  
9 business the member, employee, or agent is investigating as  
10 provided by Section 32.151 that relates to the operation of a  
11 subsurface area drip dispersal system or any other record the  
12 commission requires the business to maintain.

13 SECTION 2. (a) The Texas Commission on Environmental  
14 Quality shall adopt rules and be prepared to accept applications  
15 for permits under Chapter 32, Water Code, as added by this Act, not  
16 later than July 31, 2006.

17 (b) A person is not required to hold a permit under Chapter  
18 32, Water Code, as added by this Act, before November 1, 2006.

19 SECTION 3. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2005.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 3, 2005**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** **HB2651** by Krusee (Relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality. ), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program for sub-surface area drip dispersal systems.

The TCEQ reports that it would require 3 additional FTEs and related costs of approximately \$163,000 per year to handle the additional permitting and enforcement responsibilities created by the bill. Although the would not be authorized to assess a fee to cover the cost of implementing the sub surface area drip dispersal systems permitting program, this estimate does not assume that the additional costs to the TCEQ would be significant to the Waste Permitting and Field Operations divisions' budgets.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 582 Commission on Environmental Quality, 537 Department of State Health Services

**LBB Staff:** JOB, WK, ZS, TL

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 18, 2005**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB2651** by Krusee (Relating to the authority of the Texas Natural Resource Conservation Commission to regulate a sub-surface area drip dispersal system as a separate category of commercial, industrial, and municipal non-hazardous liquid waste disposal.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program for sub-surface area drip dispersal systems. The TCEQ would be authorized to charge an application fee

The TCEQ reports that it would require 3 additional FTEs and related costs of approximately \$163,000 per year to handle the additional permitting and enforcement responsibilities created by the bill. The TCEQ reports that since the agency would be authorized to charge a maximum fee of \$2,000 for the application fee plus the costs of notices (approximately \$50), the bill would generate only \$102,000 in revenues in the first year of the program (fiscal year 2006) and only \$16,400 in future years. Although the revenue is therefore not anticipated to cover the cost of implementing the sub surface area drip dispersal systems permitting program, this estimate does not assume that additional costs to the TCEQ would be significant to the Waste Permitting Division and the Field Operations Divisions.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 537 Department of State Health Services, 582 Commission on Environmental Quality

**LBB Staff:** JOB, WK, ZS, TL

By: Krusee (Senate Sponsor - Ogden) H.B. No. 2651  
(In the Senate - Received from the House May 16, 2005;  
May 17, 2005, read first time and referred to Committee on Natural  
Resources; May 21, 2005, reported favorably by the following vote:  
Yeas 9, Nays 0; May 21, 2005, sent to printer.)

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of subsurface area drip dispersal  
systems by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Water Code, is amended by  
adding Chapter 32 to read as follows:

CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the  
Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on  
Environmental Quality.

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste  
substance that may cause or might reasonably be expected to cause  
pollution of fresh water and that may result from:

(i) processes of industry, manufacturing,  
trade, or business;

(ii) development or recovery of natural  
resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of  
cities, towns, villages, communities, water districts, other  
municipal corporations, educational facilities, apartment  
complexes, and other commercial facilities; and

(B) does not include:

(i) oil and gas waste, as defined by Section  
27.002;

(ii) tar sands;

(iii) sulfur;

(iv) brine from desalination; or

(v) hazardous waste, as defined by Section  
361.003, Health and Safety Code.

(3) "Department" means the Department of State Health  
Services.

(4) "Executive director" means the executive director  
of the commission.

(5) "Fresh water" has the meaning assigned by Section  
27.002.

(6) "Pollution" has the meaning assigned by Section  
27.002.

(7) "Processed" means the action of reducing liquid  
waste to a state that will allow injection by subsurface drip  
dispersal into an area without creating pollution.

(8) "Subsurface area drip dispersal system" means a  
waste disposal system that injects processed commercial,  
industrial, or municipal waste into the ground at a depth of not  
more than 48 inches and spreads the waste over a large enough area  
that the soil hydrologic absorption rate and crop/plant root  
absorption rate are not exceeded.

Sec. 32.003. POLICY AND PURPOSE. It is the policy of this  
state and the purpose of this chapter to:

(1) maintain the quality of fresh water in the state to  
the extent consistent with the public health and welfare and the  
operation of existing industries;

(2) promote the beneficial reuse of commercial,  
industrial, and municipal waste for the economic development of the  
state, thereby reducing the demand on the state's supply of fresh

2-1 water;

2-2 (3) prevent underground injection that may pollute  
2-3 fresh water; and

2-4 (4) require the use of all reasonable methods to  
2-5 implement this policy.

2-6 [Sections 32.004-32.050 reserved for expansion]

#### 2-7 SUBCHAPTER B. JURISDICTION OF COMMISSION

2-8 Sec. 32.051. PERMIT FROM COMMISSION. A person may not  
2-9 operate a subsurface area drip dispersal system without first  
2-10 obtaining a permit from the commission.

2-11 Sec. 32.052. APPLICATION FOR PERMIT. The commission shall  
2-12 prescribe forms for application for a permit and shall make the  
2-13 forms available on request without charge.

2-14 Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An  
2-15 applicant shall furnish any information the executive director  
2-16 considers necessary to discharge the executive director's duties  
2-17 under this chapter and the rules of the commission.

2-18 Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving  
2-19 an application for a permit, the executive director shall inspect  
2-20 the location of the proposed dispersion area to determine the local  
2-21 conditions and the probable effect of the subsurface area drip  
2-22 dispersal system.

2-23 Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The  
2-24 executive director shall submit to the department and to other  
2-25 persons designated by the commission copies of each permit  
2-26 application received in proper form. A person to whom an  
2-27 application is submitted may make recommendations to the commission  
2-28 concerning any aspect of the application not later than the 30th day  
2-29 after the date the application is submitted.

2-30 Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this  
2-31 section, "local government" has the meaning assigned by Section  
2-32 26.001.

2-33 (b) The commission may hold a public hearing on a permit  
2-34 application for a subsurface area drip dispersal system if the  
2-35 commission determines that a hearing is necessary and in the public  
2-36 interest.

2-37 (c) The commission shall hold a public hearing on a permit  
2-38 application for a subsurface area drip dispersal system if a  
2-39 hearing is requested by a local government located in the county of  
2-40 the proposed disposal site or by an affected person.

2-41 (d) The commission by rule shall provide for giving notice  
2-42 of the opportunity to request a public hearing on a permit  
2-43 application. The rules for notice shall include provisions for  
2-44 giving notice to local governments and affected persons.

2-45 (e) Before the commission begins to hear the testimony in a  
2-46 contested case as defined by Chapter 2001, Government Code,  
2-47 evidence must be placed in the record to demonstrate that proper  
2-48 notice regarding the hearing was given to affected persons. If  
2-49 mailed notice to an affected person is required, the commission or  
2-50 other party to the hearing shall place evidence in the record that  
2-51 notice was mailed to the address of the affected person included in  
2-52 the appropriate county tax rolls at the time of mailing. For the  
2-53 purposes of this subsection, the affidavit of the commission  
2-54 employee responsible for the mailing of the notice, attesting to  
2-55 the fact that notice was mailed to the address included in the tax  
2-56 rolls at the time of mailing, shall be prima facie evidence of  
2-57 proper mailing. The commission may not proceed with receipt of  
2-58 testimony in a contested case until the requirements of this  
2-59 subsection are complied with.

2-60 Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The  
2-61 commission shall send copies of proposed rules under this chapter  
2-62 to the department and any other persons designated by the  
2-63 commission. A person to whom the copies of proposed rules are sent  
2-64 may submit comments and recommendations to the commission and shall  
2-65 have a reasonable time to do so as determined by the commission.

2-66 [Sections 32.058-32.100 reserved for expansion]

#### 2-67 SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

2-68 Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may  
2-69 grant an application for a permit for a subsurface area drip

dispersal system in whole or part and may issue the permit if it finds that:

(1) the use or installation of the system is in the public interest;

(2) with proper safeguards, both subsurface and surface fresh water can be adequately protected from pollution; and

(3) the applicant has provided for the proper operation of the system.

(b) In the permit, the commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution.

(c) The commission, in determining if the use or installation of a subsurface area drip dispersal system is in the public interest under Subsection (a)(1), shall consider:

(1) compliance history of the applicant and related entities under the method for evaluating compliance history developed by the commission under Section 5.754 and in accordance with the provisions of Subsection (d) of this section;

(2) whether there is a practical, economic, and feasible alternative to a subsurface area drip dispersal system reasonably available; and

(3) any other factor the commission considers relevant.

(d) The commission shall establish a procedure for the preparation of comprehensive summaries of the applicant's compliance history, including the compliance history of any corporation or other business entity managed, owned, or otherwise closely related to the applicant. The summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to giving public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for a subsurface area drip dispersal system permit with environmental statutes and the rules adopted or orders or permits issued by the commission may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. Evidence of the compliance history of an applicant for a subsurface area drip dispersal system permit may be offered by the executive director at a hearing on the application and admitted into evidence subject to the rules of evidence. The commission shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit. If the commission concludes that the applicant's compliance history is unacceptable, the commission shall deny the permit.

Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The commission shall send to the department a copy of each permit issued under this chapter.

(b) Before beginning injection operations, a person receiving a permit for a subsurface area drip dispersal system shall file a copy of the permit with the applicable local health authorities of the area in which the system is located.

[Sections 32.103-32.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL POWERS

Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee of the commission or an authorized agent or employee of a local government may enter public or private property to inspect and investigate conditions relating to a subsurface area drip dispersal system in connection with subsurface drip dispersal activities or to monitor compliance with a rule, permit, or order of the commission. A member or employee acting under the authority of this section who enters an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee of the commission or an authorized agent or employee of a local government may examine and copy any record or memorandum of a business the member, employee, or agent is investigating as provided by Section 32.151 that relates to the operation of a

4-1 subsurface area drip dispersal system or any other record the  
4-2 commission requires the business to maintain.

4-3 SECTION 2. (a) The Texas Commission on Environmental  
4-4 Quality shall adopt rules and be prepared to accept applications  
4-5 for permits under Chapter 32, Water Code, as added by this Act, not  
4-6 later than July 31, 2006.

4-7 (b) A person is not required to hold a permit under Chapter  
4-8 32, Water Code, as added by this Act, before November 1, 2006.

4-9 SECTION 3. This Act takes effect immediately if it receives  
4-10 a vote of two-thirds of all the members elected to each house, as  
4-11 provided by Section 39, Article III, Texas Constitution. If this  
4-12 Act does not receive the vote necessary for immediate effect, this  
4-13 Act takes effect September 1, 2005.

4-14 \* \* \* \* \*

FAVORABLE  
SENATE COMMITTEE REPORT ON

SB SCR SJR ~~SR~~ HB HCR HJR 2051  
By Fraser Ladden  
(Author/Senate Sponsor)  
5-21-2005  
(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure,  
have on 5/20/05, had the same under consideration and I am instructed to report it  
(date of hearing)  
back with the recommendation (s) that it:

☒ do pass and be printed

☐ do pass and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	<input checked="" type="checkbox"/>			
Senator Jackson, Vice-Chair	<input checked="" type="checkbox"/>			
Senator Barrientos	<input checked="" type="checkbox"/>			
Senator Duncan			<input checked="" type="checkbox"/>	
Senator Estes	<input checked="" type="checkbox"/>			
Senator Fraser	<input checked="" type="checkbox"/>			
Senator Hinojosa	<input checked="" type="checkbox"/>			
Senator Lindsay	<input checked="" type="checkbox"/>			
Senator Madla	<input checked="" type="checkbox"/>			
Senator Seliger	<input checked="" type="checkbox"/>			
Senator Staples			<input checked="" type="checkbox"/>	
TOTAL VOTES	9	0	2	0

COMMITTEE ACTION

☒ S260 Considered in public hearing

☐ S270 Testimony taken

COMMITTEE CLERK

CHAIRMAN



## **BILL ANALYSIS**

Senate Research Center  
79R14877 JTS-F

H.B. 2651  
By: Krusee (Ogden)  
Natural Resources  
5/20/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

In 2001, the Texas Commission on Environmental Quality (TCEQ) determined that subsurface drip dispersal systems would not be included in the Underground Injection Code (UIC) program due to the irrigation and beneficial reuse labels. In August 2003, the United States Environmental Protection Agency (EPA) defined any injection within a "formation" as an injection well. TCEQ determined that the root zone was not included as part of the formation.

However, the EPA has since stated that the root zone is, in fact, part of the formation. Therefore, these systems are required to meet the federal UIC rules for class V injection.

Subsurface drip dispersal systems reuse water for golf courses, park areas, neighborhood landscaping, school sports and playground facilities, and youth-league sports facilities. These commercial uses can help minimize total waste treatment costs by reducing the need for miles of interceptors or by producing income from the sale of reused water.

H.B. 2651 keeps subsurface drip dispersal systems from being placed under Underground Injection Code requirements. H.B. 2651 requires the TCEQ to create rules separate from the underground injection category and sets up a permitting system for subsurface drip dispersal systems.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 32.056, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle D, Title 2, Water Code, by adding Chapter 32, as follows:

#### **CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 32.001. SHORT TITLE. Authorizes this chapter to be cited as the Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. Defines "commission," "commercial, industrial, or municipal waste," "department," "executive director," "fresh water," "pollution," "processed," and "subsurface area drip dispersal system"

Sec. 32.003. POLICY AND PURPOSE. Sets forth the policy of the state and the purpose of this chapter.

[Reserves Sections 32.004-32.050 for expansion.]

##### **SUBCHAPTER B. JURISDICTION OF COMMISSION**

Sec. 32.051. PERMIT FROM COMMISSION. Prohibits a person from operating a subsurface area drip dispersal system without first obtaining a permit from the Texas Commission on Environmental Quality (TCEQ).

Sec. 32.052. APPLICATION FOR PERMIT. Requires TCEQ to prescribe forms for application for a permit and to make the forms available on request without charge.

Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. Requires an applicant to furnish any information the executive director of TCEQ (executive director) considers necessary to discharge the executive director's duties under this chapter and the rules of TCEQ.

Sec. 32.054. INSPECTION OF DISPERSION AREA. Requires the executive director, on receiving an application for a permit, to inspect the location of the proposed dispersion area to determine the local conditions and the probable effect of the subsurface area drip dispersal system.

Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. Requires the executive director to submit to the Department of State Health Services (DSHS) and to other persons designated by the commission copies of each permit application received in proper form. Authorizes a person to whom an application is submitted to make recommendations to TCEQ concerning any aspect of the application not later than the 30th day after the date the application is submitted.

Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) Provides that in this section, "local government" has the meaning assigned by Section 26.001.

(b) Authorizes TCEQ to hold a public hearing on a permit application for a subsurface area drip dispersal system upon determining that a hearing is necessary and in the public interest.

(c) Requires TCEQ to hold a public hearing on a permit application for a subsurface area drip dispersal system if a hearing is requested by a local government located in the county of the proposed disposal site or by an affected person.

(d) Requires TCEQ, by rule, to provide for giving notice of the opportunity to request a public hearing on a permit application. Requires the rules for notice to include provisions for giving notice to local governments and affected persons.

(e) Requires evidence to be placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons, before TCEQ begins to hear the testimony in a contested case as defined by Chapter 2001 (Administrative Procedure), Government Code. Requires TCEQ or other party to the hearing, if mailed notice to an affected person is required, to place evidence in the record that notice was mailed to the address of the affected person included in the appropriate county tax rolls at the time of mailing. Requires the affidavit of a TCEQ employee responsible for the mailing of the notice, for the purposes of this subsection, attesting to the fact that notice was mailed to the address included in the tax rolls at the time of mailing, to be prima facie evidence of proper mailing. Prohibits TCEQ from prohibiting with receipt of testimony in a contested case until the requirements of this subsection are complied with.

Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. Requires TCEQ to send copies of proposed rules under this chapter to DSHS and any other persons designated by TCEQ. Authorizes a person to whom the copies of proposed rules are sent to submit comments and recommendations to TCEQ and to have a reasonable time to do so as determined by TCEQ.

[Reserves Sections 32.058-32.100 for expansion.]

#### SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

Sec. 32.101. ISSUANCE OF PERMIT. (a) Authorizes TCEQ to grant an application for a permit for a subsurface area drip dispersal system in whole or part and to issue the permit upon determining specific findings.

(b) Requires TCEQ to impose terms and conditions in the permit reasonably necessary to protect fresh water from pollution.

(c) Requires TCEQ, in determining if the use or installation of a subsurface area drip dispersal system is in the public interest under Subsection (a)(1), to make specific considerations.

(d) Requires TCEQ to establish a procedure for the preparation of comprehensive summaries of the applicant's compliance history, including other specific information. Sets forth requirements for the application and evidence. Requires TCEQ to consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit. Requires TCEQ to deny the permit upon concluding that the applicant's compliance history is unacceptable.

Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) Requires TCEQ to send a copy of each permit issued under this chapter to DSHS.

(b) Requires a person receiving a permit for a subsurface area drip dispersal system to file a copy of the permit with the applicable local health authorities of the area in which the system is located, before beginning injection operations.

[Reserves Sections 32.103-32.150 for expansion.]

#### SUBCHAPTER D. GENERAL POWERS

Sec. 32.151. POWER TO ENTER PROPERTY. Authorizes a member or employee of TCEQ or an authorized agent or employee of a local government to enter public or private property to inspect and investigate conditions relating to a subsurface area drip dispersal system in connection with subsurface drip dispersal activities or to monitor compliance with a rule, permit, or order of the commission. Requires a member or employee acting under the authority of this section who enters an establishment on public or private property to observe the establishment's safety, internal security, and fire protection rules.

Sec. 32.152. POWER TO EXAMINE RECORDS. Authorizes a member or employee of the commission or an authorized agent or employee of a local government to examine and copy any record or memorandum of a business the member, employee, or agent is investigating as provided by Section 32.151 that relates to the operation of a subsurface area drip dispersal system or any other record TCEQ requires the business to maintain.

SECTION 2. Requires TCEQ to adopt rules and be prepared to accept applications for permits under Chapter 32, Water Code, as added by this Act, not later than July 31, 2006. Provides that a person is not required to hold a permit under Chapter 32, Water Code, as added by this Act, before November 1, 2006.

SECTION 3. Effective date: upon passage or September 1, 2005.

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 21, 2005**

**TO:** Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB2651** by Krusee (Relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program for sub-surface area drip dispersal systems.

The TCEQ reports that it would require 3 additional FTEs and related costs of approximately \$163,000 per year to handle the additional permitting and enforcement responsibilities created by the bill. Although the would not be authorized to assess a fee to cover the cost of implementing the sub surface area drip dispersal systems permitting program, this estimate does not assume that the additional costs to the TCEQ would be significant to the Waste Permitting and Field Operations divisions' budgets.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 582 Commission on Environmental Quality, 537 Department of State Health Services

**LBB Staff:** JOB, WK, ZS, TL

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 3, 2005**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB2651** by Krusee (Relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality. ), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program for sub-surface area drip dispersal systems.

The TCEQ reports that it would require 3 additional FTEs and related costs of approximately \$163,000 per year to handle the additional permitting and enforcement responsibilities created by the bill. Although the would not be authorized to assess a fee to cover the cost of implementing the sub surface area drip dispersal systems permitting program, this estimate does not assume that the additional costs to the TCEQ would be significant to the Waste Permitting and Field Operations divisions' budgets.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 582 Commission on Environmental Quality, 537 Department of State Health Services

**LBB Staff:** JOB, WK, ZS, TL

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 18, 2005**

**TO:** Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** **HB2651** by Krusee (Relating to the authority of the Texas Natural Resource Conservation Commission to regulate a sub-surface area drip dispersal system as a separate category of commercial, industrial, and municipal non-hazardous liquid waste disposal.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would require the Texas Commission on Environmental Quality (TCEQ) to establish a permitting program for sub-surface area drip dispersal systems. The TCEQ would be authorized to charge an application fee

The TCEQ reports that it would require 3 additional FTEs and related costs of approximately \$163,000 per year to handle the additional permitting and enforcement responsibilities created by the bill. The TCEQ reports that since the agency would be authorized to charge a maximum fee of \$2,000 for the application fee plus the costs of notices (approximately \$50), the bill would generate only \$102,000 in revenues in the first year of the program (fiscal year 2006) and only \$16,400 in future years. Although the revenue is therefore not anticipated to cover the cost of implementing the sub surface area drip dispersal systems permitting program, this estimate does not assume that additional costs to the TCEQ would be significant to the Waste Permitting Division and the Field Operations Divisions.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 537 Department of State Health Services, 582 Commission on Environmental Quality

**LBB Staff:** JOB, WK, ZS, TL

# REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN  
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that HB 2051, by Krusee / Oaden,  
(Bill No.) (Author/Sponsor)  
was heard by the Committee on Natural Resources on 5/20,  
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Kathy C. Gilbert  
(Clerk of the reporting committee)

**IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.**

F

ENROLLED

H.B. No. 2651

AN ACT

relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Water Code, is amended by adding Chapter 32 to read as follows:

CHAPTER 32. SUBSURFACE AREA DRIP DISPERSAL SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Subsurface Area Drip Dispersal System Act.

Sec. 32.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Commercial, industrial, or municipal waste":

(A) means any water-dominant liquid waste substance that may cause or might reasonably be expected to cause pollution of fresh water and that may result from:

(i) processes of industry, manufacturing, trade, or business;

(ii) development or recovery of natural resources, except as provided by Paragraph (B); or

(iii) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, other municipal corporations, educational facilities, apartment



complexes, and other commercial facilities; and

(B) does not include:

(i) oil and gas waste, as defined by Section 27.002;

(ii) tar sands;

(iii) sulfur;

(iv) brine from desalination; or

(v) hazardous waste, as defined by Section 361.003, Health and Safety Code.

(3) "Department" means the Department of State Health Services.

(4) "Executive director" means the executive director of the commission.

(5) "Fresh water" has the meaning assigned by Section 27.002.

(6) "Pollution" has the meaning assigned by Section 27.002.

(7) "Processed" means the action of reducing liquid waste to a state that will allow injection by subsurface drip dispersal into an area without creating pollution.

(8) "Subsurface area drip dispersal system" means a waste disposal system that injects processed commercial, industrial, or municipal waste into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

Sec. 32.003. POLICY AND PURPOSE. It is the policy of this

state and the purpose of this chapter to:

(1) maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries;

(2) promote the beneficial reuse of commercial, industrial, and municipal waste for the economic development of the state, thereby reducing the demand on the state's supply of fresh water;

(3) prevent underground injection that may pollute fresh water; and

(4) require the use of all reasonable methods to implement this policy.

[Sections 32.004-32.050 reserved for expansion]

SUBCHAPTER B. JURISDICTION OF COMMISSION

Sec. 32.051. PERMIT FROM COMMISSION. A person may not operate a subsurface area drip dispersal system without first obtaining a permit from the commission.

Sec. 32.052. APPLICATION FOR PERMIT. The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Sec. 32.053. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the executive director considers necessary to discharge the executive director's duties under this chapter and the rules of the commission.

Sec. 32.054. INSPECTION OF DISPERSION AREA. On receiving an application for a permit, the executive director shall inspect the location of the proposed dispersion area to determine the local

1 conditions and the probable effect of the subsurface area drip  
2 dispersal system.

3 Sec. 32.055. RECOMMENDATIONS FROM OTHER PERSONS. The  
4 executive director shall submit to the department and to other  
5 persons designated by the commission copies of each permit  
6 application received in proper form. A person to whom an  
7 application is submitted may make recommendations to the commission  
8 concerning any aspect of the application not later than the 30th day  
9 after the date the application is submitted.

10 Sec. 32.056. HEARING ON PERMIT APPLICATION. (a) In this  
11 section, "local government" has the meaning assigned by Section  
12 26.001.

13 (b) The commission may hold a public hearing on a permit  
14 application for a subsurface area drip dispersal system if the  
15 commission determines that a hearing is necessary and in the public  
16 interest.

17 (c) The commission shall hold a public hearing on a permit  
18 application for a subsurface area drip dispersal system if a  
19 hearing is requested by a local government located in the county of  
20 the proposed disposal site or by an affected person.

21 (d) The commission by rule shall provide for giving notice  
22 of the opportunity to request a public hearing on a permit  
23 application. The rules for notice shall include provisions for  
24 giving notice to local governments and affected persons.

25 (e) Before the commission begins to hear the testimony in a  
26 contested case as defined by Chapter 2001, Government Code,  
27 evidence must be placed in the record to demonstrate that proper

1 notice regarding the hearing was given to affected persons. If  
2 mailed notice to an affected person is required, the commission or  
3 other party to the hearing shall place evidence in the record that  
4 notice was mailed to the address of the affected person included in  
5 the appropriate county tax rolls at the time of mailing. For the  
6 purposes of this subsection, the affidavit of the commission  
7 employee responsible for the mailing of the notice, attesting to  
8 the fact that notice was mailed to the address included in the tax  
9 rolls at the time of mailing, shall be prima facie evidence of  
10 proper mailing. The commission may not proceed with receipt of  
11 testimony in a contested case until the requirements of this  
12 subsection are complied with.

13 Sec. 32.057. OPPORTUNITY TO COMMENT ON PROPOSED RULES. The  
14 commission shall send copies of proposed rules under this chapter  
15 to the department and any other persons designated by the  
16 commission. A person to whom the copies of proposed rules are sent  
17 may submit comments and recommendations to the commission and shall  
18 have a reasonable time to do so as determined by the commission.

19 [Sections 32.058-32.100 reserved for expansion]

20 SUBCHAPTER C. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

21 Sec. 32.101. ISSUANCE OF PERMIT. (a) The commission may  
22 grant an application for a permit for a subsurface area drip  
23 dispersal system in whole or part and may issue the permit if it  
24 finds that:

25 (1) the use or installation of the system is in the  
26 public interest;

27 (2) with proper safeguards, both subsurface and

1 surface fresh water can be adequately protected from pollution; and

2 (3) the applicant has provided for the proper  
3 operation of the system.

4 (b) In the permit, the commission shall impose terms and  
5 conditions reasonably necessary to protect fresh water from  
6 pollution.

7 (c) The commission, in determining if the use or  
8 installation of a subsurface area drip dispersal system is in the  
9 public interest under Subsection (a)(1), shall consider:

10 (1) compliance history of the applicant and related  
11 entities under the method for evaluating compliance history  
12 developed by the commission under Section 5.754 and in accordance  
13 with the provisions of Subsection (d) of this section;

14 (2) whether there is a practical, economic, and  
15 feasible alternative to a subsurface area drip dispersal system  
16 reasonably available; and

17 (3) any other factor the commission considers  
18 relevant.

19 (d) The commission shall establish a procedure for the  
20 preparation of comprehensive summaries of the applicant's  
21 compliance history, including the compliance history of any  
22 corporation or other business entity managed, owned, or otherwise  
23 closely related to the applicant. The summaries shall be made  
24 available to the applicant and any interested person after the  
25 commission has completed its technical review of the permit  
26 application and prior to giving public notice relating to the  
27 issuance of the permit. Evidence of compliance or noncompliance by

1 an applicant for a subsurface area drip dispersal system permit  
2 with environmental statutes and the rules adopted or orders or  
3 permits issued by the commission may be offered by any party at a  
4 hearing on the applicant's application and admitted into evidence  
5 subject to applicable rules of evidence. Evidence of the  
6 compliance history of an applicant for a subsurface area drip  
7 dispersal system permit may be offered by the executive director at  
8 a hearing on the application and admitted into evidence subject to  
9 the rules of evidence. The commission shall consider all evidence  
10 admitted, including compliance history, in determining whether to  
11 issue, amend, extend, or renew a permit. If the commission  
12 concludes that the applicant's compliance history is unacceptable,  
13 the commission shall deny the permit.

14 Sec. 32.102. COPIES OF PERMIT FILING REQUIREMENTS. (a) The  
15 commission shall send to the department a copy of each permit issued  
16 under this chapter.

17 (b) Before beginning injection operations, a person  
18 receiving a permit for a subsurface area drip dispersal system  
19 shall file a copy of the permit with the applicable local health  
20 authorities of the area in which the system is located.

21 [Sections 32.103-32.150 reserved for expansion]

22 SUBCHAPTER D. GENERAL POWERS

23 Sec. 32.151. POWER TO ENTER PROPERTY. A member or employee  
24 of the commission or an authorized agent or employee of a local  
25 government may enter public or private property to inspect and  
26 investigate conditions relating to a subsurface area drip dispersal  
27 system in connection with subsurface drip dispersal activities or

1 to monitor compliance with a rule, permit, or order of the  
2 commission. A member or employee acting under the authority of this  
3 section who enters an establishment on public or private property  
4 shall observe the establishment's safety, internal security, and  
5 fire protection rules.

6 Sec. 32.152. POWER TO EXAMINE RECORDS. A member or employee  
7 of the commission or an authorized agent or employee of a local  
8 government may examine and copy any record or memorandum of a  
9 business the member, employee, or agent is investigating as  
10 provided by Section 32.151 that relates to the operation of a  
11 subsurface area drip dispersal system or any other record the  
12 commission requires the business to maintain.

13 SECTION 2. (a) The Texas Commission on Environmental  
14 Quality shall adopt rules and be prepared to accept applications  
15 for permits under Chapter 32, Water Code, as added by this Act, not  
16 later than July 31, 2006.

17 (b) A person is not required to hold a permit under Chapter  
18 32, Water Code, as added by this Act, before November 1, 2006.

19 SECTION 3. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2005.

H.B. No. 2651

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 2651 was passed by the House on May 13, 2005, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 2651 was passed by the Senate on May 25, 2005, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 2651<sup>✓</sup> was passed by the House  
(1)

on May 13<sup>✓</sup>, 2005, by the following vote:  
(2)

Yeas 142<sup>✓</sup>, Nays 0, 2 present, not voting<sup>✓</sup>  
(3) (4)

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 2651<sup>✓</sup> was passed by the Senate

on May 25<sup>✓</sup>, 2005, by the following vote:  
(5)

Yeas 31<sup>✓</sup>, Nays 0<sup>✓</sup>  
(6) (7)

\_\_\_\_\_  
Secretary of the Senate


APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\*\*\*\* Preparation: CT24

H.B. No. 2651

By 

**A BILL TO BE ENTITLED  
AN ACT**

RELATING TO THE AUTHORITY OF THE TEXAS NATURAL RESOURCE CONSERVATION  
COMMISSION TO REGULATE A SUB-SURFACE AREA DRIP DISPERSAL SYSTEM AS A  
SEPARATE CATEGORY OF COMMERCIAL, INDUSTRIAL, AND MUNICIPAL NON-HAZARDOUS  
LIQUID WASTE DISPOSAL.

MAR 10 2005 Filed with the Chief Clerk

MAR 16 2005 Read first time and referred to Committee on Environmental Regulation

APR 29 2005 Reported favorably (~~amended~~)  
(as substituted)

MAY 04 2005 Sent to Committee on (~~Calendars~~)  
(Local & Consent Calendars)

MAY 13 2005 Read second time (comm. subst.) (~~amended~~); passed to third reading (~~failed~~) by a (non-record vote)  
(~~record vote of~~        yeas,        nays,        present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)  
by a vote of        yeas,        nays,        present, not voting

MAY 13 2005 Read third time (~~amended~~), finally passed (~~failed to pass~~) by a (~~non-record vote~~)  
(record vote of 142 yeas, 0 nays, 2 present, not voting)

Engrossed

MAY 16 2005 Sent to Senate

  
CHIEF CLERK OF THE HOUSE

**OTHER HOUSE ACTION:**

MAY 16 2005 Received from the House

MAY 17 2005 Read and referred to Committee on NATURAL RESOURCES

MAY 21 2005 Reported favorably       

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

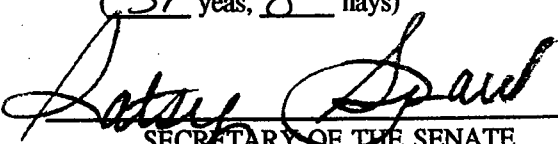
MAY 25 2005 Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)  
(       yeas,        nays)

MAY 25 2005 Read second time,       , and passed to third reading by (unanimous consent)  
(a viva voce vote)  
(       yeas,        nays)

MAY 25 2005 Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays

MAY 25 2005 Read third time,       , and passed by (a viva voce vote)  
(31 yeas, 0 nays)

May 25, 2005 Returned to the House

  
SECRETARY OF THE SENATE

**OTHER SENATE ACTION:**

MAY 25 2005

Returned from the Senate (amended)  
(amended)

House concurred in Senate amendments by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee  
by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

House conferees appointed: \_\_\_\_\_, Chair; \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Senate granted House request. Senate conferees appointed: \_\_\_\_\_, Chair;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Conference committee report adopted (rejected) by the House by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays)

05 MAY -4 AM 12:32

HOUSE OF REPRESENTATIVES